

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SHOPIFY INC. AND SHOPIFY  
(USA), INC.,

Plaintiffs and  
Counterclaim  
Defendants,

v.

EXPRESS MOBILE, INC.,

Defendant and  
Counterclaim  
Plaintiff.

Civil Action No. 19-439-RGA

ORDER

For the reasons stated in the accompanying Memorandum Opinion, **IT IS HEREBY ORDERED** that the two pending motions (D.I. 211; D.I. 217) are resolved as follows:

1. Shopify's motion for summary judgment of no infringement of the asserted claims of the Web Design patents regarding the claimed "run time engine" is **GRANTED**.
2. Shopify's motion for summary judgment for non-infringement of the asserted claims of the '168 patent is **GRANTED**.
3. Shopify's motion for summary judgment that it does not infringe the asserted claims of the '397 patent because the browser's JavaScript and rendering engines are not the claimed "virtual machine" is **DENIED**.
4. Shopify's motion for summary judgment that "virtual machine" renders the asserted claims of the '397 patent invalid for lack of written description is **DENIED**.

5. Shopify's motion for summary judgment that Shopify's system does not infringe the asserted claims of the Web Component patents because there is no "Player" is **DENIED**.
6. Shopify's motion for summary judgment that if conditional JavaScript for determining device configuration can be the claimed "Player," the asserted claims of the Web Component patents lack sufficient written description is **DENIED**.
7. Shopify's partial motion for summary judgment on Express Mobile's claims of willful infringement is **GRANTED**.
8. Shopify's *Daubert* motion that Dr. Almeroth's and Mr. Bratic's expert testimony should be excluded is **DENIED**.
9. Express Mobile's motion for summary judgment of no invalidity under 35 U.S.C. § 101 is **GRANTED** as to the asserted claims of all five patents-in-suit.
10. Express Mobile's motion for summary judgment as to no invalidity of the asserted claims of the '397 and '168 patents under 35 U.S.C. § 102 is **DENIED**.
11. Express Mobile's motion for summary judgment that the term "data format class type" in asserted claims 1 and 13 of the '287 patent and asserted claims 1, 17, and 19 of the '044 patent is not indefinite 35 U.S.C. § 112 is **GRANTED**. Plaintiff is ORDERED to submit within one week a proposed claim construction (comprehensible to a jury) for the term "data format class type."
12. Express Mobile's motion for summary judgment that the term "subclass of User Interface (UI) objects" in asserted claims 1 and 13 of the '287 patent and asserted claims 1, 17, and 19 of the '044 patent is not indefinite under 35 U.S.C. § 112 is **GRANTED**.
13. Express Mobile's motion for summary judgment that the claimed "player" that "utilizes information stored in said database to generate for the display of at least a portion of said

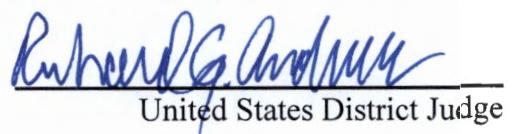
one or more web pages" in asserted claims 1, 17, and 19 of the '044 patent is not indefinite under 35 U.S.C. § 112 is **GRANTED**.

14. Express Mobile's *Daubert* motion as to Bakewell related to settlement agreements is

**DENIED**.

15. Express Mobile's *Daubert* motion as to Schmandt and Wirfs-Brock related to virtual machine is **DENIED**.

Entered this 21 day of September, 2021.

  
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United States District Judge